It is common ground that this section does not apply in this case as no judgment was obtained against Harper Gilfillan and Company Limited.

Section 16 reads as follows:—

(a) any tenant of premises who remains in possession thereof after the determination by any means of his tenancy and who cannot by reason of the provisions of this Ordinance be deprived of such possession by his landlord;

(b) any sub-tenant becoming a statutory tenant under and by virtue of the provisions of sub-section (2) of section 15."

Section 17 sets out the terms under which a statutory tenant is deemed to hold the premises.

The learned Trial Judge (Rogers J.) held that the respondents were tenants within the meaning of the definition given by section 2 and were entiled to the protection of section 14 as the appellants were not able to bring their case within any of the exceptions therein set out. He held further that when the interest of Harper Gilfillan and Company Limited ceased as from 31st August, 1950, their lawful sub-tenants, the respondents, began to hold as tenants from the head landlords. The Court of Appeal (Murray-Aynsley, C.J. Singapore, Matthew, C.J. Federation of Malaya and Brown, J.) agreed with these conclusions.

Before the Board the case for the appellants has been put in this way. The action was one at common law and therefore outside the Ordinance. Section 14 imposes restraint on the common law right, but deals only with premises comprised in a tenancy, and here the tenancy had ceased to exist, having been determined by the notice to quit served upon Harper Gilfillan and Company Limited. Section 16 does not help the respondents as the word "tenant" as used therein cannot be deemed to include a sub-tenant.

The principle underlying the Ordinance is the protection of those who have obtained lawful possession of premises whether as tenants or sub-tenants and sections 14 and 16 must be read in the light of the definitions given in section 2. Harper Gilfillan and Company Limited were as regards the respondents "landlords" and the respondents were their "tenants." The premises in suit were comprised in a "tenancy". Clearly the appellants cannot bring the case within any of the exceptions covered by section 14.

The case is governed by section 16, clause (*a*). It was conceded on behalf of the appellants that the word "tenant" would include a sub-tenant if this clause had stopped at the word "tenancy" but it was suggested that the words which follow, "and who cannot by reason of the provisions of this Ordinance be deprived of such possession by his landlord" indicate that a sub-tenant is excluded. Their Lordships cannot accept this interpretation. They consider that the additional words merely refer back to section 14, just as clause (*b*) refers back to section 15, and do not restrict the meaning of the words used in the first part of the clause. For these reasons their Lordships hold that the respondents are statutory tenants within the meaning of section 16 (*a*) and consequently their possession of the premises is protected.

Their Lordships will humbly advise Her Majesty that the appeal should be dismissed. The appellants will bear the costs.

Appeal dismissed.

Solicitors for the appellants: *Chalton Hubbard & Co.*

Solicitors for the respondents: *Sydney Redfern & Co.*

LIM KEE BUTT v. PUBLIC PROSECUTOR.

[C. A. (Mathew C.J., Brown Ag. C.J. (S.) and Wilson J.) December 2, 1953]

[K.L. — Criminal Reference No. 4 of 1953]

Penal Code, s. 409 — Criminal breach of trust by a public servant — Circumstances in which a Government servant is considered a public servant within the meaning of s. 21 Penal Code.

This was a reference made to the Court of Appeal by the Attorney General to determine the question:—

"Whether a temporary clerk in the employment of the Federation, whose duties were set out in the judgment of Mr. Justice Bellamy in the case was a public servant within the meaning of the Penal Code."

The appellant was convicted by the Sessions Court, Malacca, under section 409 of the Penal Code, with having committed a criminal breach of trust as a public servant within the meaning of section 21 of the Penal Code. The learned judge on appeal held that the appellant was not a public servant and altered the conviction to one under section 406 of the Penal Code.

Held: that the appellant was a public servant within the meaning of clause 9 of section 21 of the Penal Code and accordingly the conviction under section 406 of the Penal Code was set aside and the original conviction under section 409 restored.

Decision of Bellamy J. reported in the (1953) M.L.J. 209 reversed.

Cases referred to:—

(1) *Regina v. Ramjirav Jibvajirav* (1875) 12 Bom. H.C.R. 1.

(2) *Ahad Shah v. Emperor* (1918) A.I.R. (Lah) 152.

(3) *Nazamuddin v. Queen Empress* I.L.R. 28 C. 344.

(4) *Jugal Singh v. Emperor* (1943) A.I.R. (P) 315.

CRIMINAL REFERENCE.

The judgment of the Court of Appeal was delivered by Mathew, C.J.

Mathew, C.J. : — The following point has been referred to us by the Attorney-General for determination :—

"Whether a temporary clerk in the employment of the Federation, whose duties were as set out in the judgment of Mr. Justice Bellamy in the case, was a public servant within the meaning of the Penal Code."

The appellant was convicted by the President, Sessions Court, Malacca, under section 409 of the Penal Code, with having committed criminal breach of trust as a public servant within the meaning of section 21 of the Penal Code. The duties of the appellant, who was a temporary clerk attached to the police station Jasin, are set out in the learned judge's judgment, and read :—

"The precise nature of his duties is not stated in evidence, but one of his duties would appear from the evidence of Che Zamani bin Samah, the Officer in Charge of the Police District Jasin (Witness 10) to be that of filling in of the particulars in the printed forms of offers of composition, including on occasions the amount to be paid which would have been given to him by Che Zamani beforehand, and of placing of such offers of composition when completed before Che Zamani for his signature. The appellant had no authority whatsoever from Che Zamani to receive payment when offers of composition were accepted. The person authorised, quite illegally in my view, to accept payment of offers of composition when accepted was the chief clerk of the station who, without any authority, appears to have passed on these duties to the appellant."

If the appellant is a public servant, he must fall within the ninth clause of section 21 of the Penal Code, which reads :—

"Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of Government, or to make any survey, assessment or contract on behalf of Government, or to execute any revenue-process, or to investigate, or to report on any matter affecting the pecuniary interests of Government, or to make, authenticate or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government or remunerated by fees or commission for the performance of any public duty."

The learned judge on appeal held that the appellant was not a public servant, following two decisions viz : *Regina v. Ramjirav Jibvajirav*[1] and *Ahad Shah v. Emperor*[2]. The learned judge did not have before him certain decisions which might well have caused him to come to a different conclusion. In our view, the authorities which we now set out are conclusive in establishing that the appellant in this case is a public servant within the definition contained in clause nine of section 21 of the Penal Code.

In *Nazamuddin v. Queen Empress*[3], the relevant part of Prinsep J's. judgment (pp. 345-346) sets out clearly the point in issue :—

"The petitioner, who is a peon attached to the office of the Superintendent of the Salt Department in the District of Muzafferpore, has been convicted under section 161 of the Indian Penal Code.

The first question we have to consider on this rule is whether the petitioner is a public servant within the terms of section 21 of the Indian Penal Code. It is contended by Mr. Abdur Rahim that he does not fall within the terms of the last portion of clause 9 of that section which declares that 'every officer in the service or pay of Government' is a public servant, because he is not an officer. The case of Regina v. Ramjirav Jibvajirav[1], supra is cited as authority for this. The learned judges in that case had to consider whether a lessee from Government was on the conditions of his lease a public servant, and in doing so, they considered generally the meaning of the term 'officer'. It was there held that an officer means 'some person employed to exercise, to some extent and in certain circumstances, a delegated function of Government. He is either armed with some authority or representative character, or his duties are immediately auxiliary to those of some person who is so armed.' The meaning which we are asked to put on these words seems to us to be too narrow as applied to the present case. The peon who has been convicted as a public servant is in service and pay of Government, and he is attached to the office of the Superintendent of the Salt Department. The exact nature of his duties is not stated, because this objection was not taken at the trial, but we must take it that, from the nature of his appointment, it was his duty to carry out the orders of his official superior, who undoubtedly is a public servant, and in that capacity, to assist the Superintendent in the performance of the public duties of his office. In that sense he would be an officer of Government, although he might not possibly exercise 'any delegated function of the Government.' Still his duties would be 'immediately auxiliary to those of the Superintendent who is so armed.' We think that an 'officer in the service or pay of Government' within the terms of section 21 of the Penal Code is one who is appointed to some office for the performance of some public duty. In this sense the peon would come within section 21 clause 9."

In *Jugal Singh v. Emperor*[4], it was held that a clerk in a Government Collectorate is a public servant within the meaning of clause (9) of section 21 of the Penal Code. The following passage from the judgment of Meredith, J. (p. 316) is relevant :—

"We have not been told what the duties of the complainant were but, whatever they may have been, he falls, in my judgment, merely by reason of the fact that he was a clerk in the Government Collectorate, within the terms of the definition, as an 'officer in the service or pay of the Crown.' It has been argued by Mr. S. N. Banerjee for the petitioner that these words are to be read as governed by the subsequent words 'for the performance of any public duty.' In my view, that interpretation is not correct. I think the words 'for the performance of any public duty' govern only the words 'remunerated by fees or commission.' But even upon Mr. Banerjee's interpretation I think the duties of a Collectorate clerk, whatever that may be, in connection with his official employment, must be considered public duties. In either view, therefore, it follows that a clerk in a Government Collectorate is a public servant within the meaning of clause (9) of section 21 Penal Code, and so within the meaning of the Defence of India Rules."

In our view, the appellant in this Reference is a public servant within the meaning of clause (9) of section 21 of the Penal Code. Accordingly, we set aside the conviction under section 406 of the Penal Code and restore the original conviction under section 409 of the Penal Code.

Order accordingly.